

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1059

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), ~~Berg~~, Blakeslee, Canciamilla, Cogdill,
Parra, Salinas, and Vargas)**

February 22, 2005

An act to ~~amend Section 56382.5 of~~ *add Section 56382.8 to the Food and Agricultural Code, relating to growers , and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as amended, Committee on Agriculture. Agriculture: growers' complaints.

Existing law provides that a grower or licensee with a complaint not subject to specified federal jurisdiction may, subject to specified procedures, file the complaint with the Food and Agriculture Department. Existing law also provides for alternate dispute resolution under certain circumstances.

~~This bill would require the department, when issuing its written factual summary to the parties, to include a proposed settlement amount if one can be determined,~~ *prescribe a process by which aggrieved growers or licensees, who are not subject to specified federal provisions, and if that provided that the amount of the claim is \$30,000 or less, may file a complaint that would be subject to expedited review and settlement, as specified. Because the fee imposed in connection with the complaint would be deposited into the continuously appropriated Department of Food and Agriculture Fund, the bill would make an appropriation.*

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 56382.5 of the Food and Agricultural~~
2 ~~Code is amended to read:~~
3 *SECTION 1. Section 56382.8 is added to the Food and*
4 *Agricultural Code, to read:*
5 *56382.8. (a) In addition to all other complaint procedures*
6 *provided for in this chapter, any aggrieved grower or licensee*
7 *with a complaint that is not subject to the federal Packers and*
8 *Stockyards Act, 1921(7 U.S.C. Sec. 181, et seq.) or the federal*
9 *Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec.*
10 *499a et seq.) and for which the claim for damages does not*
11 *exceed \$30,000, may file a verified complaint with the*
12 *department, subject to expedited review and settlement. Informal*
13 *complaints may be made for damages, but not for disciplinary*
14 *action, although the department may issue a complaint pursuant*
15 *to Section 56382 as the basis for disciplinary action. Informal*
16 *complaints must be received by the department within nine*
17 *months of when the claimant ought to have reasonably known of*
18 *its existence, as required under Section 56446.*
19 *(b) Complaints must be submitted to the department in writing*
20 *and verified, and may be transmitted via United States mail,*
21 *overnight delivery, or by facsimile transmission, setting forth the*
22 *essential details of the transactions complained of, including the*
23 *following:*
24 *(1) The name and address of each party to the dispute, of the*
25 *agent, representing him or her in the transaction involved, if any,*
26 *as well as the party's counsel, if any.*
27 *(2) The quantity and quality or grade of each kind of produce*
28 *shipped if a grade or quality is the basis of payment.*
29 *(3) The date of shipment.*
30 *(4) The carrier identification if a carrier was used.*
31 *(5) The shipping and destination points.*
32 *(6) If a sale, the date, sale price, and amount actually*
33 *received.*
34 *(7) If a consignment, the date, reported proceeds, gross, and*
35 *net.*

1 (8) *A precise estimate of the amount of damages claimed, if*
2 *known.*

3 (9) *A brief statement of material facts in dispute, including*
4 *terms of applicable contracts.*

5 (10) *The amount of damages being sought.*

6 (c) *The complaint shall also, so far as practicable, be*
7 *accompanied by true copies of all available papers relating to*
8 *the transaction complained about, including shipping documents,*
9 *letters, telegrams, invoices, manifests, inspection certificates,*
10 *accountings, accounts of sale, and any special contracts or*
11 *agreements.*

12 (d) *The informal complaint shall be accompanied by a*
13 *nonrefundable filing fee of sixty dollars (\$60) as required under*
14 *Section 56382.5.*

15 (e) *Upon confirmation that a complaint has been properly and*
16 *timely filed, including the securing of a denial letter from the*
17 *United States Department of Agriculture under the Federal*
18 *Packers and Stockyards Act, 1921 or the Federal Perishable*
19 *Agricultural Commodities Act, 1930 the department shall send a*
20 *copy of the complaint on the respondent by certified mail and*
21 *advise the respondent that it shall have 30 days from notice of*
22 *receipt of the complaint in which to answer the complaint. The*
23 *answer shall contain a brief response to the complaint, including*
24 *the respondent's position with respect to the claimant's*
25 *description of matters in dispute, the relevant facts, and the*
26 *remedy sought, together with a description of any claims it may*
27 *have against the complainant, in the same manner as claims are*
28 *to be set out in the complaint. The respondent shall also include*
29 *any pertinent documentation relevant to its defense with its*
30 *answer.*

31 (f) *After receipt of the answer from the respondent, the*
32 *department shall informally consult with the parties to clarify the*
33 *nature of the dispute and to facilitate the exchange of*
34 *information between the parties in order to assist the parties in*
35 *reaching an expedited informal resolution of the dispute. The*
36 *informal consultation process will last no longer than 60 days.*
37 *The parties shall cooperate fully with the department and shall*
38 *participate in the informal consultation process.*

39 (g) *If the informal consultation process provided for in this*
40 *section does not result in resolution of the dispute, the parties*

1 *may then pursue other alternate dispute resolution systems*
2 *including those provided for in this chapter.*

3 ~~56382.5. (a) An aggrieved grower or licensee with a~~
4 ~~complaint that is not subject to the federal Packers and~~
5 ~~Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal~~
6 ~~Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec.~~
7 ~~499a et seq.) may seek resolution of that complaint by filing a~~
8 ~~complaint with the department within nine months from the date~~
9 ~~a complete account of sales was due. The complaint shall be~~
10 ~~accompanied by two copies of all documents in the~~
11 ~~complainant's possession that are relevant to establishing the~~
12 ~~complaint, a filing fee of sixty dollars (\$60), and a written denial~~
13 ~~of jurisdiction from the appropriate federal agency unless the~~
14 ~~commodity involved clearly does not fall under the federal~~
15 ~~Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or~~
16 ~~the federal Perishable Agricultural Commodities Act, 1930 (7~~
17 ~~U.S.C. Sec. 499a et seq.). Within five business days of receipt of~~
18 ~~a signed and verified complaint, the filing fee, and the denials of~~
19 ~~federal jurisdiction, the department shall serve the verified~~
20 ~~complaint on the respondent. Service shall be by certified mail.~~
21 ~~The department, the secretary, the department's employees, the~~
22 ~~department's agents, the boards and commissions associated with~~
23 ~~the department, their employees or agents, and the State of~~
24 ~~California are not parties to the dispute in a proceeding brought~~
25 ~~under this section.~~

26 ~~(b) The respondent served shall answer within 30 calendar~~
27 ~~days of service. Respondent's response shall include two copies~~
28 ~~of all relevant documentation of the transactions referred to in the~~
29 ~~verified complaint.~~

30 ~~(c) Within 30 calendar days of receipt of the answer, the~~
31 ~~department shall issue to both parties a written factual summary~~
32 ~~on the basis of the documents that have been filed with the~~
33 ~~department, including a proposed amount of settlement if one can~~
34 ~~be determined from the information available to the department~~
35 ~~and if that amount is \$30,000 or less.~~

36 ~~(d) If a settlement is not reached within 30 calendar days after~~
37 ~~the department's summary is issued, the department, on request~~
38 ~~of the claimant or respondent and upon payment of a filing fee of~~
39 ~~three hundred dollars (\$300), shall schedule alternate dispute~~
40 ~~resolution, to commence within 90 calendar days. The~~

1 ~~department shall serve both parties with a notice of hearing,~~
2 ~~which sets out the time, date, street address, room number,~~
3 ~~telephone number, and name of the hearing officer. Service of~~
4 ~~the notice of hearing shall be by certified mail.~~

5 ~~(e) The alternate dispute resolution shall proceed as follows:~~

6 ~~(1) The hearing shall be conducted by hearing officers in~~
7 ~~accordance with standard procedures promulgated by the~~
8 ~~American Arbitration Association or other acceptable alternative~~
9 ~~dispute resolution entities.~~

10 ~~(2) The hearing officers shall be familiar with the type of~~
11 ~~issues presented by such claims, but need not be attorneys.~~

12 ~~(3) The sole parties to the proceedings shall be the~~
13 ~~complainant and the respondent.~~

14 ~~(4) The disputes, claims, and interests of the department or the~~
15 ~~State of California are not within the jurisdiction of the~~
16 ~~proceedings.~~

17 ~~(5) The validity of a regulation of the department or order~~
18 ~~promulgated pursuant to this code is not within the jurisdiction of~~
19 ~~the proceedings.~~

20 ~~(6) Law and motion matters shall be handled by the assigned~~
21 ~~hearing officer.~~

22 ~~(7) The hearing officer has no authority to enter into~~
23 ~~settlement discussions except upon stipulation of the parties~~
24 ~~involved.~~

25 ~~(8) The parties may represent themselves in propria persona or~~
26 ~~may be represented by a licensed attorney at law. A party may~~
27 ~~not be represented by a representative who is not licensed to~~
28 ~~practice law.~~

29 ~~(9) To the extent of any conflict between any provision of~~
30 ~~Chapter 4.5 (commencing with Section 11400) of Part 1 of~~
31 ~~Division 3 of Title 2 of the Government Code and this article,~~
32 ~~this article shall prevail.~~

33 ~~(10) The hearing officer may order a review of records or an~~
34 ~~audit of records by a certified public accountant. The review or~~
35 ~~audit shall be conducted under generally accepted auditing~~
36 ~~standards of the American Institute of Certified Public~~
37 ~~Accountants, and upon completion of the review or audit the~~
38 ~~nature and extent of the review or audit shall be disclosed to the~~
39 ~~parties by the auditor in the audit report. The audit report shall~~
40 ~~disclose the number of transactions reviewed and the rationale~~

1 for selecting those transactions. The department shall advance the
2 costs of the audit or review of records, but the hearing officer
3 shall apportion the costs at the conclusion of the hearing. The
4 department shall pursue repayment in accordance with the
5 hearing officer's apportionment and may bring an action in a
6 court of competent jurisdiction to recover funds advanced.
7 Nothing in this subdivision shall be construed to require the
8 department to pursue any specific remedy or to prohibit the
9 department from accepting a reasonable repayment plan.

10 (f) The hearing officer shall render a written decision within
11 60 days of submission of the case for decision. In addition to
12 rendering a written finding as to what is owed by whom on the
13 substantive allegations of the complaint, the hearing officer shall
14 decide whether or not to order the full cost of the alternative
15 dispute resolution proceeding, and in what ratio or order the
16 losing party is to pay the costs of the proceeding. For these
17 purposes, the cost of the alternative dispute resolution proceeding
18 does not include the filing fee, the parties' attorney fees, or
19 expert witness fees. The hearing officer may also award a
20 sanction against a complainant for filing a frivolous complaint or
21 against a respondent for unreasonable delay tactics, bad faith
22 bargaining, or resistance to the claim, of either 10 percent of the
23 amount of the award or a specific amount, up to a maximum of
24 one thousand dollars (\$1,000). Any sanction award shall not be
25 deemed to be res judicata or collateral estoppel in any subsequent
26 case in which either the complainant or respondent are charged
27 with filing a frivolous complaint, unreasonable delay tactics, bad
28 faith bargaining, or resistance to the claim. The department may
29 consider the written decision of the hearing officer in
30 determining any related licensing action. The written decision of
31 the hearing officer may be introduced as evidence at a court
32 proceeding.

33 (g) Nothing in this section prohibits the parties to the dispute
34 from settling their dispute prior to, during, or after the hearing.

35 (h) Nothing in this section alters, precludes, or conditions the
36 exercise, during any stage of the proceedings provided by this
37 chapter, of any other rights to relief a party may have through
38 petition to a court of competent jurisdiction, including, but not
39 limited to, small claims court.

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